

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number:  13466-008001
<p>I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450.</p> <p>_____</p> <p>Date of Deposit</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Typed or Printed Name of Person Signing Certificate</p>	Application Number  09/422,339	Filed  October 21, 1999
	First Named Inventor  Woolston et al.	
	Art Unit  3625	Examiner  Matthew S. Gart
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a Notice of Appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record <u>35,322</u> (Reg. No.)</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> </div> <div style="width: 45%; text-align: center;"> <div style="display: flex; justify-content: center; gap: 20px;"> <div> <b>BY HWA C. LEE</b>  <b>REG. NO. 59,747</b> </div> <div>             _____              Signature              John C. Phillips              _____              Typed or printed name              _____              (858) 678-5070              Telephone number              _____              March 1, 2007              Date           </div> </div> </div> </div>		
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p>		
<p><input checked="" type="checkbox"/> Total of 2 forms are submitted.</p>		

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Woolston et al.	Art Unit:	3625
Serial No.:	09/422,339	Examiner:	Matthew S. Gart
Filed:	October 21, 1999	Conf. No.:	5419
Title:	MODULAR COMPUTER PROGRAM FOR MANAGING DYNAMIC PRICING INFORMATION		

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Commissioner for Patents  
P.O. Box 1450  
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pursuant to United States Patent and Trademark Office OG Notices: 12 July 2005 - New Pre-Appeal Brief Conference Pilot Program and 07 February 2006 - Extension of the Pilot Pre-Appeal Brief Conference program, a request for a review of identified matters on appeal is hereby submitted with the Notice of Appeal. Review of these identified matters by a panel of examiners is requested because the rejections of record are clearly improper and without basis in view of a clear legal and factual deficiency in the rejections. All rights to address additional matters on appeal in any subsequent appeal brief are hereby reserved.

Claims 1-66 are pending, with claims 1, 27, 48 and 49 being independent. In the Office Action dated November 1, 2006, the Examiner rejected Claims 49-66 under 35 U.S.C. 101, as allegedly being directed to non-statutory subject matter. Claims 1, 3-5, 10-27, 29-49 and 51-66 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Application Publication No. 2006/0074792 to Wagoner et al. ("Wagoner") in view of U.S. Patent Application Publication No. 6,133,912 to Montero et al. ("Montero"). Claims 2, 6-9, 28 and 50 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagoner in view of Montero and further in view of U.S. Patent No. 6,697,824 to Bowman-Amuah ("Bowman").

REMARKS

Examiner Refuses to Enter Amendment Filed on February 1, 2007

In the Advisory Action Dated 2/7/2007, the Examiner refuses to enter the amendment submitted on 2/1/2007 because the amendment allegedly raises new issues that would require further consideration and/or search. The amendment was directed to claim 49, which obviated the rejection under 35 U.S.C. § 101. Since the Examiner has already rejected claims 49-66 twice, amending claim 49 merely to obviate the § 101 rejection does not raise new issues. The amendment should be entered because the amendment at least reduces issues for appeal.

Rejections under 35 U.S.C. § 101

Claims 49-66 stand rejected under 35 U.S.C. 101 for allegedly being directed toward non-statutory subject matter. The rejections and their underlying reasoning are traversed.

Claim 49 recites a computer software embodied on a tangible medium, which defines structural interrelationships between the computer software and the tangible medium, and thus claim 49 is clearly directed to statutory subject matter. (*See* MPEP 2106.01(I).) Further, amended claim 49 recites a practical application of the instructions included in the computer software that causes a computer system to perform operations including presenting a user-interface and transferring information. Therefore, independent claim 49 and its dependent claims 50-66 clearly are directed to statutory subject matter as defined in MPEP 2106(I).

Rejections under 35 U.S.C. § 103(a)

Claims 1, 3-5, 10-27, 29-49 and 51-66 stand rejected under 35 U.S.C. 103(a) as allegedly being obvious over the combination of Wagoner and Montero et al. Applicant respectfully traverses the rejections and their underlying rationale.

With respect to claim 1, the proposed combination of Wagoner and Montero fails to disclose or suggest each and every element of claim 1. In particular, the proposed combination fails to disclose or suggest the claimed ***communicating the dynamic pricing information selected by the first user to a second user for display at a modular computer program***, as recited in claim 1. The Examiner erroneously contends that “[h]aving accessed the Data Center system, the Data Center system [in Wagoner] can display on the vehicle dealer terminal a scrolling ticker containing information regarding the one or more vehicle auctions contained in the auction center (i.e., dynamic pricing information).” (*See*, Office Action Dated November 1, 2007 at pg. 12, citing to Wagoner at ¶ [0103].) Also, the Examiner appears to be addressing only one element (i.e., dynamic pricing information) of the many claimed elements in claim 1, and thus the rejection fails to establish *prima facie* obviousness. (*See*, MPEP 2143.03.)

The proposed combination of Wagoner and Montero fails to disclose or suggest that the claimed ***dynamic pricing information is selected by the first user*** and that the ***dynamic pricing information is communicated to a second user*** as recited in claim 1. The cited portions of Wagoner disclose that “[i]n another embodiment, the auction data may be displayed on a vehicle terminal....a terminal used by a vehicle dealer to access the Data Center system.” (*See* Wagoner at ¶ [0103].) However, Wagoner fails to disclose or suggest whether the auction data displayed

on the vehicle dealer terminal includes *dynamic pricing information selected by the first user* as recited in claim 1. Wagoner simply discloses an alternate remote location for viewing the auction data, and being able to view the auction data at a remote location discloses nothing about a relationship between the data and the first user. Therefore, displaying the auction data on a vehicle dealer terminal in Wagoner clearly fails to teach or suggest the claimed *communicating the dynamic pricing information selected by the first user to a second user for display at a modular computer program* as recited in claim 1.

Further, the addition of Montero fails to alleviate the deficiencies of Wagoner. Montero teaches "an apparatus and technique for delivering information to subscribers on a communication network such that the information and the subscriber's selected data is simultaneously viewable by the subscriber." (Montero at Col. 2, ll. 56-60.) In Montero, information sent to the subscribers are obtained from multiple INFO servers 120, which "continuously transmit information, such as advertisements,..., to form a sequence of information." (*Id.* at Col. 4, ll. 63-66.) While Montero provides information, such as advertisements to the subscribers, Montero, similar to Wagoner, is silent as to whether the claimed *dynamic pricing information is selected by the first user* and whether this *dynamic pricing information selected by the first user is communicated to a second user for display at a modular computer program* as recited in claim 1.

In addition, the Examiner concedes that Wagoner fails to disclose the claimed *presenting to the first user of the modular computer program an interactive visual indication of a user-attractive resource available on the computer network, the user-attractive indication of a user-attractive resource available on the computer network, the user-attractive resource is visually embedded within the stream of dynamic pricing information displayed by the modular computer program*, as recited in claim 1. (See Office Action Dated November 1, 2006, pg. 4.) The addition of Montero fails to alleviate the deficiencies of Wagoner.

While Montero provides information, such as advertisements to the subscribers, Montero is silent as to whether the information in Montero is *visually embedded within the stream of dynamic pricing information*, as recited in claim 1. Even if, arguendo, the information displayed in Montero could reasonably be construed as the claimed *user-attractive resource*, Montero would still fail to teach or suggest that the information is *visually embedded within the stream of dynamic pricing information*, as recited in claim 1. Therefore, even if, arguendo, the

alleged dynamic pricing information in Wagoner could somehow be combined with the information in Montero, the hypothetical combination of Wagoner and Montero would still fail to teach or suggest each and every feature of claim 1, for example, the claimed *user-attractive resource which is visually embedded within the stream of dynamic pricing information displayed by the modular computer program*. Further, both Wagoner and Montero fail to teach or suggest a desirability to embed information in Montero within the alleged stream of dynamic pricing information in Wagoner. For at least these reasons, claim 1 is patentable over the proposed combination of Wagoner and Montero.

Independent Claims 27, 48, and 49

Independent claims 27, 48, and 49 are allowable over the proposed combination of Wagoner and Montero for at least the reasons set forth with respect to claim 1 above.

Dependent Claims 3-5, 10-26, 29-47, and 51-56

Dependent claims 3-5, 10-26, 29-47, and 51-56 depend from claims 1, 27 and 49, and are allowable over the proposed combination of Wagoner and Montero for at least the same reasons.

Dependent Claims 2, 6-9, 28 and 50

Claims 2, 6-9, 28 and 50 stand rejected under 35 U.S.C. § 103(a) based on the proposed combination of Wagoner, Montero and Bowman. The rejections and their underlying reasoning are respectfully traversed.

Claims 2, 6-9, 28 and 50 depend from claims 1, 27 and 49, and are allowable over the proposed combination of Wagoner and Montero for at least the same reasons. The addition of Bowman fails to alleviate the deficiencies of Wagoner and Montero.

Bowman is directed to a system and method “for interacting with a user over a network for personalizing a website.” (See Bowman at Abstract.) In addition, Bowman discloses using Java to “create robust User Interface (UI) components.” (See *id.* at Col. 10, ll. 12-21.) However, Bowman suffers from the same deficiencies as Wagoner and Montero with respect to the claimed elements of independent claims 1, 27 and 49. Merely disclosing the use of Java programming is not sufficient to teach or suggest each and every feature of independent claims 1, 27 and 49. For example, Bowman fails to disclose or suggest the claimed Applet ***computer program*** capable of ***receiving dynamic pricing information, displaying the received dynamic pricing information, receiving from the first user information, sending the received selection information, and presenting to the second user*** as recited in claims 1-2, 27-28 and 49-50. For at least these

reasons, claim 2, 6-9, 28 and 50 are allowable over the proposed combination of Wagoner, Montero and Bowman.

Conclusion

The amendment submitted on 2/1/2007 should be entered since the amendment reduces issues (e.g., obviates § 101 rejections) for appeal. Further, at least independent claims 1, 27, 48 and 49 unquestionably recite patentable subject matter.

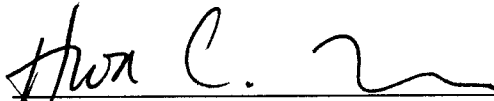
It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as intent to concede any issue with regard to any claim, except as specifically stated in this paper.

For the foregoing reasons, all pending claims are in condition for allowance, and a notice to that effect is requested.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: March 1, 2007

  
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